

**DEPARTMENT OF STATE REVENUE**

**LETTER OF FINDINGS NUMBER: 01-0204**

**Individual Income Tax  
For Tax Years 1998 through 1999**

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superceded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

**ISSUE**

**I. Income Tax—County Tax**

**Authority:** IC 6-3.5-6-1; IC 6-3.5-7-1; 45 IAC 3.1-1-109

Taxpayer protests the Department's assessment of county income tax.

**STATEMENT OF FACTS**

Taxpayers are nonresident shareholders in an Indiana business located in a county adopting a county income tax. As the result of an investigation, the Indiana Department of Revenue ("Department") issued assessments for county income taxes for the years in question. Taxpayer protests these assessments. Further facts will be supplied as necessary.

**I. Income Tax—County Tax**

**DISCUSSION**

Taxpayers own shares in an Indiana business, and received distributions from the business. The Department conducted an investigation of the business and discovered that the business had underreported commissions received for January 1998 and December 1999, resulting in understatement of Adjusted Gross Income. Also, the Department decided that the business had not withheld the proper amounts of county income tax on the distributions to shareholders, in this case the taxpayers. The Department based its decision on IC 6-3.5-6-1, IC 6-3.5-7-1 and 45 IAC 3.1-1-109. IC 6-3.5-6-1 states in relevant part:

"Adjusted gross income" has the same definition that the term is given in IC 6-3-1-3.5. However, in the case of a county taxpayer who is not treated

as a resident county taxpayer of a county, the term includes only adjusted gross income derived from his principal place of business or employment.

...

IC 6-3.5-7-1 states in relevant part:

- (a) Except as otherwise provided in this section, as used in this chapter, “adjusted gross income” has the meaning set forth in IC 6-3-1-3.5(a).
- (b) In the case of a county taxpayer who is not a resident of a county that has imposed the county economic development income tax, the term “adjusted gross income” includes only adjusted gross income derived from the taxpayer’s principal place of business or employment.

...

45 IAC 3.1-1-109 states:

Subchapter S Corporations-Withholding Requirements. Small business corporations electing Subchapter S status under Internal Revenue Code section 1372 are required to withhold adjusted gross income tax and county adjusted gross income tax on any nonresident shareholder’s share of taxable income of the corporation, whether distributed or undistributed, and pay such amounts to the Department in the manner described in Regulation 6-3-4-12(010) [45 IAC 3.1-1-108]. Such corporations shall make monthly (or quarterly) and annual returns as provided in Regulation 6-3-4-12(020) [45 IAC 3.1-1-108] and furnish a copy of form WH-18 to each nonresident shareholder as provided in that regulation.

The additional county tax assessed by the Department was based on distributions from the corporation to the taxpayers as shareholders. While the Department is correct that 45 IAC 3.1-1-109 holds S Corporations responsible for collecting county adjusted gross income tax, IC 6-3.5-7-1(b) explains that county income tax includes only adjusted gross income derived from the taxpayer’s principal place of business or employment.

Taxpayers did not have a place of business or employment in an Indiana county during the audit period. The distributions taxpayers received as shareholder of the corporation are not subject to county taxes as explained in IC 6-3.5-7-1(b). In this case, taxpayers were only subject to Indiana adjusted gross income tax, which were properly paid, not county taxes.

### **FINDING**

Taxpayer’s protest is sustained.